

**JUVENILE CUSTODY MAINTENANCE  
AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Darin G. Peterson**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Juvenile Court Act of 1996 to provide for a hardship waiver of child support expenses owed to an agency.

**Highlighted Provisions:**

This bill:

- ▶ defines the term "agency";
- ▶ grants rulemaking authority to agencies to provide for a hardship waiver of an obligation to pay child support to an agency;
- ▶ describes requirements relating to a hardship waiver and the reasons that a hardship waiver may be granted;
- ▶ requires an agency to notify the Office of Recovery Services when the agency grants a hardship waiver; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



62A-4a-114, as last amended by Laws of Utah 2003, Chapter 176

78-3a-906, as last amended by Laws of Utah 2006, Chapter 281

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section 62A-4a-114 is amended to read:

**62A-4a-114. Financial reimbursement by parent or legal guardian.**

(1) [The] Except as provided in Subsection 78-3a-906(12), the division shall seek reimbursement of funds it has expended on behalf of a child in the protective custody, temporary custody, or custody of the division, from the child's parents or legal guardians in accordance with an order for child support under Section 78-3a-906.

(2) A parent or any other obligated person is not responsible for support for periods of time that a child is removed upon a finding by the Juvenile Court that there were insufficient grounds for that removal and that child is returned to the home of the parent, parents, or legal guardians based upon that finding.

(3) In the event that the Juvenile Court finds that there were insufficient grounds for the initial removal, but that the child is to remain in the custody of the state, the Juvenile Court shall order that the parents or any other obligated persons are responsible for support from the point at which it became improper to return the child to the home of his or her parent, parents, or legal guardians.

(4) The attorney general shall represent the division in any legal action taken to enforce this section.

Section 2. Section 78-3a-906 is amended to read:

**78-3a-906. Child support obligation when custody of a child is vested in an individual or institution -- Agency waiver of child support.**

(1) As used in this section, "agency" means a secure youth corrections facility or any other state department, division, or agency.

[~~(1)~~] (2) When legal custody of a child is vested by the court in [~~a secure youth corrections facility or any other state department, division, or agency~~] an agency, other than the child's parents, or if the guardianship of the child has been granted to another party and an agreement for a guardianship subsidy has been signed by the guardian, the court shall order the parents, a parent, or any other obligated person to pay child support for each month the child is

in custody. In the same proceeding the court shall inform the parents, a parent, or any other obligated person, verbally and in writing, of the requirement to pay child support in accordance with Title 78, Chapter 45, Uniform Civil Liability for Support Act.

~~[(2)]~~ (3) If legal custody of a child is vested by the court in ~~[a secure youth corrections facility, or any other state department, division, or]~~ an agency, the court may refer the establishment of a child support order to the Office of Recovery Services. The referral shall be sent to the Office of Recovery Services within three working days of the hearing. Support obligation amounts shall be set by the Office of Recovery Services in accordance with Title 78, Chapter 45, Uniform Civil Liability for Support Act.

~~[(3)]~~ (4) If ~~[referred]~~ the court refers the establishment of a child support order to the Office of Recovery Services ~~[pursuant to Subsection (2)]~~ under Subsection (3), the court shall also inform the parties that they are required to contact the Office of Recovery Services within 30 days of the date of the hearing to establish a child support order, and of the penalty described in Subsection ~~[(5)]~~ (6) for failing to do so. If there is no existing child support order for the child, the liability for support shall accrue beginning on the 61st day following the hearing that occurs the first time the court vests custody of the child in ~~[a secure youth corrections facility, or any other state department, division, or]~~ an agency other than ~~[his]~~ the child's parents.

~~[(4)]~~ (5) If a child is returned home and legal custody is subsequently vested by the court in a secure youth corrections facility or any other state department, division, or agency other than his parents, the liability for support shall accrue from the date the child is subsequently removed from the home, including time spent in detention or sheltered care.

~~[(5)]~~ (6) (a) If the parents, parent, or other obligated person meets with the Office of Recovery Services within 30 days of the date of the hearing, the child support order may not include a judgment for past due support for more than two months.

(b) Notwithstanding Subsection ~~[(5)]~~ (6)(a), the court may order the liability of support to begin to accrue from the date of the proceeding referenced in Subsection ~~[(4)]~~ (2) if:

(i) the parents, parent, or any other person obligated fails to meet with the Office of Recovery Services within 30 days after being informed orally and in writing by the court of that requirement; and

(ii) the Office of Recovery Services took reasonable steps under the circumstances to

90 contact the parents, parent, or other person obligated within the subsequent 30-day period to  
91 facilitate the establishment of the child support order.

92 (c) For purposes of Subsection [~~(5)~~] (6)(b)(ii), the Office of Recovery Services shall be  
93 presumed to have taken reasonable steps if the office:

94 (i) has a signed, returned receipt for a certified letter mailed to the address of the  
95 parents, parent, or other obligated person regarding the requirement that a child support order  
96 be established; or

97 (ii) has had a documented conversation, whether by telephone or in person, with the  
98 parents, parent, or other obligated person regarding the requirement that a child support order  
99 be established.

100 [~~(6)~~] (7) In collecting arrears, the Office of Recovery Services shall comply with  
101 Section 62A-11-320 in setting a payment schedule or demanding payment in full.

102 [~~(7)~~] (8) Unless otherwise ordered, the parents or other person shall pay the child  
103 support to the Office of Recovery Services. The clerk of the court, the Office of Recovery  
104 Services, or the Department of Human Services and its divisions shall have authority to receive  
105 periodic payments for the care and maintenance of the child, such as Social Security payments  
106 or railroad retirement payments made in the name of or for the benefit of the child.

107 [~~(8)~~] (9) No court order under this section against a parent or other person shall be  
108 entered, unless notice of hearing has been served within the state, a voluntary appearance is  
109 made, or a waiver of service given. The notice shall specify that a hearing with respect to the  
110 financial support of the child will be held.

111 [~~(9)~~] (10) An existing child support order payable to a parent or other obligated person  
112 shall be assigned to the Department of Human Services as provided in Section 62A-1-117.

113 [~~(10)~~] (11) (a) Subsections [~~(3)~~] (4) through [~~(9)~~ ~~shall~~] (10) ~~do~~ not apply if legal  
114 custody of a child is vested by the court in an individual.

115 (b) If legal custody of a child is vested by the court in an individual, the court may  
116 order the parents, a parent, or any other obligated person to pay child support to the individual.  
117 In the same proceeding the court shall inform the parents, a parent, or any other obligated  
118 person, verbally and in writing, of the requirement to pay child support in accordance with  
119 Title 78, Chapter 45, Uniform Civil Liability for Support Act.

120 (12) (a) In accordance with Subsections (12)(b) and (c), when a court orders parents, a

parent, or any other obligated person to pay child support for a child who is in the legal custody of an agency, the agency may, upon written request, waive the requirement to pay some or all of the child support if the agency finds that the waiver is necessary in order to avoid an undue hardship.

(b) The hardship waiver described in Subsection (12)(a):

(i) may only be granted pursuant to rules made under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, by the agency to which the child support is due;

(ii) shall be in writing; and

(iii) shall be for a specified period of time.

(c) For purposes of this Subsection (12), an undue hardship exists if the agency finds that failure to grant the waiver will:

(i) interfere with the treatment plan of a child in state custody; or

(ii) result in the inability of a child in state custody, or a sibling, parent, or child of the child in state custody, to obtain:

(A) the person's basic needs for food, shelter, clothing, or elementary or secondary education; or

(B) other services needed by the person.

(d) An agency that grants a waiver under this Subsection (12), must notify the Office of Recovery Services, created in Section 62A-11-102, in writing, of the waiver, within three days after the day on which the waiver is granted.

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**Legislative Review Note**  
as of 11-15-07 7:37 AM

**Office of Legislative Research and General Counsel**

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**S.B. 106 - Juvenile Custody Maintenance Amendments**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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